



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/627,010

07/25/2003

William Kress Bodin

AUS920030242US1

3681

34533 7590 05/03/2006

INTERNATIONAL CORP (BLF)
c/o BIGGERS & OHANIAN, LLP
P.O. BOX 1469
AUSTIN, TX 78767-1469

EXAMINER

FERNANDEZ RIVAS, OMAR F

ART UNIT

PAPER NUMBER

2129

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,010

Applicant(s)

BODIN ET AL.

Examiner

Omar F. Fernández Rivas

Art Unit

2129

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/3/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to an AMENDMENT made by the Applicant entered on February 28, 2006.
2. The Office Action of November 10, 2005 is incorporated into this Final Office Action by reference.

Status of Claims

3. No claim has been amended. Claims 1-18 are pending on this application.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Snell (US Patent #5,518,001, referred to as **Snell**).

Claims 1, 7 and 13

Snell anticipates creating a user metric vector comprising a plurality of disparate user metrics (**Snell**, C2: 17-24; C4: 57-65; Fig. 3; Examiner Note (EN): A metric vector is comprised of different measurements of a user's conditions as stated by the applicant on paragraph 164, lines 1-6. Storing each sensor data in a circular buffer sequentially is considered a vector); creating a user metric space comprising a plurality of metric ranges receiving, from a user, a value for a user preference for a device (**Snell**, C2: 22-28; Examiner Note (EN): By selecting the amount of sensors to use, a metric space is

Art Unit: 2129

defined); determining whether a user metric vector is outside the user metric space (**Snell**, C2: 25-28; C3: 23-35; Examiner Note (EN): An abnormal event is outside the metric space); if the user metric vector is outside a user metric space, identifying an action (**Snell**, C6: 61-65); executing the action (**Snell**, C6: 61-65); and setting the value of a user preference for a device in dependence upon the value received from the user (**Snell**, C5: 48-53; Fig. 1).

Claims 2, 8 and 14

Snell anticipates receiving, from a user, a value for a user preference for a device comprises: detecting a device (**Snell**, C3: 23-27); and identifying a user preference the device supports (**Snell**, C5: 48-53).

Claims 3, 9 and 15

Snell anticipates detecting a device comprises polling an interface (**Snell**, C5: 48-53).

Claims 4, 10 and 16

Snell anticipates receiving, from a user, a value for a user preference for a device comprises providing the user with a prompt for a value of a user preference (**Snell**, C5: 48-53); and obtaining, from the user, the value of the user preference in response to the prompt (**Snell**, C5: 48-53).

Claims 5, 11 and 17

Snell anticipates receiving, from a user, a value for a user preference for a device comprises storing the value of the user preference (**Snell**, C5: 57-64; EN: By programming the device, the user preferences are stored in memory).

Art Unit: 2129

Claims 6, 12 and 18

Snell anticipates setting the value of a user preference on a device in dependence upon the value received from the user comprises: detecting a device (**Snell**, C3: 23-27); identifying a user preference that the device supports (**Snell**, C5: 48-53); retrieving a value for the user preference for the device from a user preference table (**Snell**, C3: 20-23; EN: The instructions contain user preferences and these are retrieved when the device is in use. Data is stored in memory in an arrangement similar to a table); and changing the value of the user preference for the device in dependence upon the retrieved value (**Snell**, C5: 57-64).

Response to Applicant's Arguments

6. Claim rejections under 35 U.S.C § 101.

In light of the support provided by the specification for the actions executed by the method of the present invention, the rejection of claims 1-7 under 35 U.S.C § 101 has been withdrawn.

7. Claim rejections under 35 U.S.C § 102(b)

The Applicant's arguments regarding the rejection of claims 1-18 under 35 U.S.C § 102 over Snell have been fully considered but are not persuasive.

8. In reference to Applicant's Arguments:

Snell Does Not Disclose Creating A User Metric Vector
Comprising A Plurality Of Disparate User Metrics

That is, Snell at column 2, lines 17-22, discloses taking various measurements of a patient's physiological conditions. Taking various measurements of a patient's physiological condition, however, is not creating a user metric vector comprising a plurality of disparate user metrics as claimed in the present application. In fact, Snell does not even mention a creating a user metric vector comprising a plurality of disparate user metrics or user metric vectors. As such, Snell does not disclose each and every element of independent claim 1, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

Paragraph 164, lines 1-6 of the Applicant's disclosure states: "the term 'disparate' user metrics means user metrics of different kinds. A user metric vector (606) being comprised of a plurality of disparate user metrics is therefore a complex indication of a user's condition comprising a plurality of different kinds of aspects of user condition and plurality of quantities measuring those aspects. In many examples of the method of FIG. 8, the user metric vector (606) comprises references the current user metric objects instantiated by a metric service". Therefore, data (metrics) received from multiple sensors placed on a user are considered to be disparate user metrics. Paragraph 104, lines 1-7 of the Applicant's disclosure states: "the class diagram of FIG. 3 includes a

metric vector class (606). Objects of the metric vector class represent a complex indication of user condition. A user metric vector typically includes a collection of a user metrics each representing a single quantifiable aspect of a user's condition and a quantity measuring the aspect. A user metric vector comprised of a plurality of disparate user metrics therefore represents a complex indication of user condition having multiple quantifiable aspects of a user's condition and multiple quantities measuring the aspects". Therefore, if data (metrics) from multiple sensors (quantity measurement) measuring physiological parameters (quantifiable aspects) from a subject is being collected and stored, a metric vector comprising a plurality of disparate user metrics is being created. Moreover, Snell describes in C4: 57-65 and Fig. 3 storing each sensor data sequentially in the memory addresses of a circular buffer which structurally similar to a vector.

9. In reference to Applicant's Arguments:

**Snell Does Not Disclose Creating A User Metric Space
Comprising A Plurality Of Metric Ranges**

That is, Snell at column 2, lines 2-28 discloses a physician directing a cardiac stimulating device to store data from some or all of the sensors. A physician directs a cardiac stimulating device to store data from some or all of the sensors. Snell's storing data from some or all of the sensors is not creating a user metric space comprising a plurality of metric ranges as claimed in the present application. In fact, Snell does not even mention a creating a user metric space, a plurality of metric ranges, a metric

space or a metric range. Snell therefore does not disclose each and every element of independent claim 1, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

Paragraph 166, lines 1-5 of the Applicant's disclosure states: "The method of FIG. 8 includes creating (605) a user metric space (610) comprising a plurality of metric ranges (210). A user metric space (610) is comprised of a plurality of disparate metric ranges for a user. That is, a metric space is defined by a plurality of disparate metric ranges for a plurality of disparate metric ids". Therefore, deciding if storing data from all or some of the sensors placed in a subject is defining a metric space and each sensor will provide the data (metric ranges) to store.

10. In reference to Applicant's Arguments:

Snell Does Not Disclose Determining Whether A User Metric Vector Is Outside The User Metric Space

That is, Snell at columns 2, lines 25-28, discloses automatically retaining the measuring data when an abnormal cardiac event is detected. Automatically retaining the measuring data when an abnormal cardiac event is detected is not determining whether a user metric vector is outside the user metric space as claimed in the present application. Snell at column 2, lines 25-28, does not even once mention anything regarding determining whether a user metric vector is outside the user metric space. In fact, Snell does not even mention determining whether a user metric vector is outside

Art Unit: 2129

the user metric space, a user metric vector, or a user metric space. Snell therefore does not disclose each and every element of independent claim 1, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

If the device is monitoring cardiac motion and detects that an abnormal cardiac event has occurred, then it has been determined that the data value (metric) received by the sensor is not in a normal range (outside of the metric space). Moreover, in column 3, lines 23-35, Snell describes a control unit that uses a sensor to monitor activity level that sends stimulating pulses to the patients heart more rapidly when the patient is inactive than when the patient is inactive, thus determining if the data received (metric vector) is not within an acceptable value (outside of the metric space).

11. In reference to Applicant's Arguments:

Snell Does Not Disclose If The User Metric Vector
Is Outside A User Metric Space, Identifying An
Action Or Executing The Action

That is, column 6, lines 61-65 of Spell discloses detecting when a predetermined cardiac condition occurs and automatically retaining the data in the memory when the predetermined cardiac condition is detected. Snell's detecting when a predetermined cardiac condition occurs and automatically retaining the data in the memory when the predetermined cardiac condition is detected is not identifying an action and executing the action if the user metric vector is outside a user metric space as claimed in the present application. Snell at column 6, lines 61-65, does not even once a user metric

Art Unit: 2129

vector or a user metric space. Snell therefore does not disclose each and every element of independent claim 1, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

Starting to store data in the memory is an action taken when a cardiac condition occurs (data received from the sensors (metric vector) is not within an acceptable value (metric space)).

12. In reference to Applicant's Arguments:

Shell Does Not Disclose Setting The Value Of A User
Preference For A Device In Dependence Upon
The Value Received From The User

That is, column 5, lines 48-52 disclose limiting the number of sensors from which data is stored. Limiting the number of sensors from which data is stored is not setting the value of a user preference for a device in dependence upon the value received from the user as claimed in the present application. In fact, Snell does not even mention user preferences, metric vectors, or metric spaces anywhere in the reference. Snell therefore does not disclose each, and every element of independent claim 1, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

The cardiac device will set a value to the number of sensors (user preference) that it is to receive data from depending on the number of sensors (value received from the user) selected by the physician (a user) through the display.

13. In reference to Applicant's Arguments:

Snell Does Not Place In The Possession Of A Person Skilled
In The Art Creating A User Metric Vector Comprising
A Plurality Of Disparate User Metrics

That is, Snell at column 2, lines 17-22, discloses taking various measurements of a patient's physiological conditions. Taking various measurements of a patient's physiological condition, however, is not creating a user metric vector comprising a plurality of disparate user metrics as claimed in the present application. In fact, Snell does not even mention a creating a user metric vector comprising a plurality of disparate user metrics or user metric vectors. As such, Snell does not place each and every element of independent claim 1 in the possession of a person of skill in the art, the rejection should be withdrawn and the claims should be allowed.

Examiner's Response

Applicant's argument is acknowledged. The Examiner's response to the Applicant's arguments in item 8 of this Office Action also applies to the argument above.

14. In reference to Applicant's Arguments:

Snell Does Not Place In The Possession Of A Person
Skilled In The Art Creating A User Metric Space
Comprising A Plurality Of Metric Ranges

That is, Snell at column 2, lines 22-28, discloses a physician directing a cardiac stimulating device to store data from some or all of the sensors. A physician directs a cardiac stimulating device to store data from some or all of the sensors. Snell's storing

Art Unit: 2129

data from some or all, of the sensors is not creating a user metric space comprising a plurality of metric ranges as claimed in the present application. In fact, Snell does not even mention a creating a user metric space, a plurality of metric ranges, a metric space or a metric range. Snell therefore does not place each and every element of independent claim 1 in the possession of a person of skill in the art, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

Applicant's argument is acknowledged. The Examiner's response to the Applicant's arguments in item 9 of this Office Action also applies to the argument above.

15. In reference to Applicant's Arguments:**Snell Does Not Place In The Possession Of A Person Skilled In The Art Determining Whether A User Metric Vector Is Outside The User Metric Space**

That is, Snell at column 2, lines 25-28, discloses automatically retaining the measuring data when an abnormal cardiac event is detected. Automatically retaining the measuring data when an abnormal cardiac event is detected is not determining whether a user metric vector is outside the user metric space as claimed in the present application. Snell at column 2, lines 25-28, does not even once mention anything regarding determining whether a user metric vector is outside the user metric space. In fact, Snell does not even mention determining whether a user metric vector is outside the user metric space, a user metric vector, or a user metric space. Snell therefore does

Art Unit: 2129

not place each and every element of independent claim 1 in the possession of a person of skill in the art, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

Applicant's argument is acknowledged. The Examiner's response to the Applicant's arguments in item 10 of this Office Action also applies to the argument above.

16. In reference to Applicant's Arguments:

Snell Does Not Place In Tile Possession Of A Person Skilled
In The Art If The User Metric Vector IS Outside A User
Metric Space Identifying An Action Or Executing The Action

That is, column 6, lines 61-65 of Snell discloses detecting when a predetermined cardiac condition occurs and automatically retaining the data in the memory when the predetermined cardiac condition is detected. Snell's detecting when a predetermined cardiac condition occurs and automatically retaining the data in the memory when the predetermined cardiac condition is detected is not identifying an action and executing the action if the user metric vector is outside a user metric space as claimed, in the present application. Snell at column 6, lines 61-65, does not even once a user metric vector or a user metric space. Snell therefore does not place each and every element of independent claim 1 in the possession of a person of skill in the art, the rejections should be withdrawn, and the claims should be allowed.

Art Unit: 2129

Examiner's Response

Applicant's argument is acknowledged. The Examiner's response to the Applicant's arguments in item 11 of this Office Action also applies to the argument above.

17. In reference to Applicant's Arguments:

Snell Does Not Place in The Possession Of A Person Skilled In The Art Setting the Value Of A User Preference For A Device In Dependence Upon The Value Received From The User

That is, column 5, lines 48-52 disclose limiting the number of sensors from which data is stored. Limiting the number of sensors from which data is stored is not setting the value of a user preference for a device in dependence upon the value received from the user as claimed in the present application. In fact, Snell does not even mention user preferences, metric vectors, or metric spaces anywhere in the reference. Snell therefore does not place each and every element of independent claim 1 in the possession of a person of skill in the art, the rejections should be withdrawn, and the claims should be allowed.

Examiner's Response

Applicant's argument is acknowledged. The Examiner's response to the Applicant's arguments in item 12 of this Office Action also applies to the argument above.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence Information

19. Any inquires concerning this communication or earlier communications from the examiner should be directed to Omar F. Fernández Rivas, who may be reached Monday through Friday, between 8:00 a.m. and 5:00 p.m. EST. or via telephone at (571) 272-2589 or email omar.fernandezrivas@uspto.gov.

If you need to send an Official facsimile transmission, please send it to (571) 273-8300.

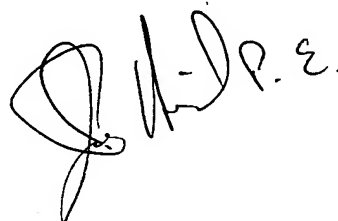
If attempts to reach the examiner are unsuccessful the Examiner's Supervisor, David Vincent, may be reached at (571) 272-3080.

Art Unit: 2129

Hand-delivered responses should be delivered to the Receptionist @ (Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22313), located on the first floor of the south side of the Randolph Building.

Omar F. Fernández Rivas
Patent Examiner
Artificial Intelligence Art Unit 2129
United States Department of Commerce
Patent & Trademark Office

Wednesday, April 26, 2006

Handwritten signature of Omar F. Fernández Rivas in cursive.Handwritten signature of J. H. P. E. in cursive.